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September 8, 2005

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## VIA ELECTRONIC FILING

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554



BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Re: **EX PARTE SUBMISSION**

WT Docket No. 03-66; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

Dear Ms. Dortch:

Yesterday, Todd Gray, counsel to the National ITFS Association ("NIA"), and the undersigned, counsel to the Catholic Television Network ("CTN"), met with Fred Campbell in Chairman Kevin Martin's office to discuss the pending petitions for reconsideration and further notice of proposed rulemaking in the above-referenced proceeding.

Our discussion focused on the need to ensure that commercial operators reimburse Educational Broadband Service ("EBS") licensees for expenses incurred by such licensees if they "self-transition" to the new 2.5 GHz band plan. Such expenses may include the cost of upgraded downconverters, retuning transmitters, and digitization. We emphasized that CTN and NIA urged the Commission to adopt a rule requiring such reimbursement in their joint petition for reconsideration filed on January 10, 2005. There is a continuing need for such a rule for several reasons.

First, requiring EBS licensees to pay for their own transitions without the prospect of reimbursement by commercial operators who ultimately enter the market, will likely delay the date by which transitions occur in some markets. If commercial operators know that they need not pay for self-transitions, they may have a perverse incentive to wait on the sidelines until a market has self-transitioned in order to avoid the expense and trouble of acting as a proponent to effectuate such transition.

Second, in situations where commercial operators choose to wait on the sidelines, EBS licensees will be denied the benefits that the Commission

Letter to Marlene H. Dortch  
September 8, 2005  
Page 2

contemplated when it adopted the new 2.5 GHz rules. In this regard, both the WCA-NIA-CTN Coalition Proposal that triggered this rulemaking, and the Commission's Report and Order released on July 29, 2004, clearly contemplated that the costs of transition of EBS stations should and would be borne by commercial operators. If EBS licensees are now required to pay for self-transitions without reimbursement, a fundamental premise of the Coalition Proposal and the Report and Order will be vitiated.

Third, Section 27.1233(c) of the Commission's rules already provides a means for commercial operators to reimburse each other for the costs of transition. In light of the Commission's goal to protect EBS licensees from the expense of transitions, it would be perverse in the extreme to end up with a rule that provides a mechanism for commercial operators to reimburse each other, but not EBS licensees.

Finally, we are confident that a simple rule can be crafted to provide for reimbursement of EBS licensees. The commercial operator reimbursement rule referenced above simply provides that "*BRS licensees must pay their own transition costs. BRS licensees in the LBS or UBS must reimburse the proponent(s) a pro rata share of the cost of transitioning the facilities they use to provide commercial service, either directly or through a lease agreement with an EBS licensee.*" If the Commission can adopt a rule for commercial operators to reimburse each other, it certainly can adopt a similar rule for the benefit of EBS licensees.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is being filed electronically.

Respectfully submitted,

/s/ Edwin N. Lavergne

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Counsel to the Catholic Television  
Network

cc Fred Campbell  
Catherine Seidel  
John Schauble  
Uzoma Onyeije